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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,153	04/16/2004	Erik C. Scher	01-002001	8584
33140	7590	07/24/2008		
NANOSYS INC. 2625 HANOVER ST. PALO ALTO, CA 94304			EXAMINER NEGIN, RUSSELL SCOTT	
			ART UNIT 1631	PAPER NUMBER
			MAIL DATE 07/24/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/826,153	Applicant(s) SCHER ET AL.
Examiner RUSSELL S. NEGIN	Art Unit 1631

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 30 June 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 26-37, 40-42, 44-48, 60 and 61.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Michael Borin, Ph.D./
Primary Examiner, Art Unit 1631

Continuation of 11, does NOT place the application in condition for allowance because: Applicant's arguments filed 30 June 2008 have been fully considered but they are not persuasive.

Applicant first argues that the combination of Cao et al. and Bruchez et al. does not teach "a mixture of two or more subsets of nanocrystals, the subsets characterized by different excitation wavelengths." This argument is not persuasive because Bruchez et al. teaches a mixture of different nanocrystals, and Cao et al. shows that two species of nanocrystals have different excitation wavelengths. Consequently, the combination of Cao et al. and Bruchez et al. teaches all of the aspects of this allegedly deficient "wherein" clause of instant independent claim 26.

Applicant continues by citing the accurate teaching of Bruchez et al. in column 8, line 44, which states, in part, "a semiconductor nanocrystal" includes a mixture of two or more such semiconductor nanocrystals..." However, applicant continues by stating on page 8 of the Remarks, "This standard patent application boilerplate is commonly inserted into applications to avoid the linguistic trap..." This argument is not persuasive, because all passages of the prior art are given the same weight when analyzing the instant invention, whether the teaching in the prior art is a central aspect of the art or an alleged formality.

Applicant continues by citing a second passage from Bruchez et al. which states that "The above method CAN BE used to prepare separate populations..." While it is agreed that the method CAN BE used to prepare separate populations, the method also CAN BE used to generate mixtures of populations. Applicant supports the fact that the method of Bruchez et al. can be used to generate mixtures of nanocrystals by citing lines 10-15 of column 17 of Bruchez et al. wherein ternary and quaternary mixtures were discussed.

With regard to claim 36, the factual basis to support this rejection is on page 8 of the Office action mailed 29 April 2008.

With regard to claim 41, pages 8-9 of the Office action mailed on 29 April 2008 addressed all of the limitations of the instant claim.

With regard to claims 47-48, applicant argues that the cited passage of Bruchez et al. is only relevant to antibodies in animals and NOT nanocrystals or barriers. This argument is not persuasive, because the passage in Bruchez preceding column 23, line 50, describes the use of nanocrystals in combination with antibodies (i.e. see column 23, lines 28-50 of Bruchez et al.) It would have consequently been obvious to use the antibody nanocrystal conjugates in animal barriers as described in column 23 of Bruchez et al..